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THE MASAI PENAL CODE

Some Notes on the Recognised Masai Punishments for Crimes, with Examples of Masai Oaths or Ordeals

121 The following notes relate to those punishments of ancient origin still remembered among the Kisongo[1] Masai. Some of the penalties are habitually inflicted up to the present day. Some, as will be obvious from a perusal of the text, have, of necessity, fallen into disuse. They have been written down from the statements of certain Masai Elders of the *'L-aiser'*[2] age, and have received the *imprimatur* of the *'L-oiboni* Páiti. Páiti[3] has asked me to say that he cannot be responsible for the authenticity of what follows, though he has no doubt that it is correct, but being a comparatively young man of the *'Iduru'*[4] age, he has not the knowledge of these things that the Elders have.

114 115 121 121 The notes are brief and unscientific, and were made, primarily, with the object of adding to our knowledge of Masai custom in the matter of criminal offences in view of the recent formation of Native Courts throughout Tanganyika Territory.

'L-ocisip: Murder

C83 (*a*) If one Masai kills another, all the cattle of the murderer are taken by the relatives of the deceased. A council is then

E34 [1] Kisongo is the Masai name for the southern Masai areas. It includes almost the entire Tanganyika Masai District as constituted to-day. The principal Masai "Districts" included under the name Kisongo are (for the purposes of this article) Monjo and Kiteto.

[2] Circumcision of *ilkiyo*, approximately, according to Hollis.

[3] Páiti is a brother of Sólo and Kimólwa, of Kenya. They are all three of the clan of the *mokilóni-ware* or *'L-oibonok*. *Ol-Oiboni* (*Laibon*) was Páiti's father, and Páiti is Sólo's brother by a different mother. Páiti came down to Tanganyika in 1913 by his own choice, and at the request of the Tanganyika Masai. He has lived here ever since in the vicinity of Tarosero. (1928; Kilimanjaro; E; 5 & 6).

[4] Circumcision of *ilkiyk*, approximately, according to Hollis. I think the date of the ceremony was somewhat later among the Masai of Tanganyika.

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held, and about half a dozen beasts are given to certain Elders (89)
and old women. The cattle are then divided. Bell-oxen, herd-leaders and cows about to calve are returned to the murderer (the original owner). The remainder are taken by the relatives of the murdered man. The matter is then regarded as having been settled, and cannot be reopened.

(b) If action is not taken at once by the relatives of the murdered man, the relatives of the murderer have the opportunity of sending a small stick or wand to the kraal of the deceased. This stick may sometimes be sent by a small boy to disarm suspicion, but it is often sent by a warrior, who endeavours to persuade some immature and unsuspicious member of the deceased's kraal to accept it. If it be accepted by any male member of the deceased's kraal, he must bring it to the Chief Elder of the kraal, who is then obliged to meet the relatives of the murderer in council. At this meeting, forty oxen are selected (good, fat beasts), and then nine more are selected. These forty-nine oxen are given to the deceased's relatives. If the stick-bearer returns, having failed to induce any member of the murdered man's kraal to accept the wand, the matter is dealt with as in (a).

(c) Sometimes the relatives of the deceased do not take action for two years or more.[1] Then they come in force to raid the murderer's cattle. They come by night and place an arrow on the ground at each gate of the kraal, and while these arrows remain there no one inside the kraal may leave it. The raiders watch silently near the kraal until early in the morning, when they call: "We want our just due." They are asked by the people in the kraal: "How many cattle do ye want?" Knowing how many the murderer owns, they state a number. If for any reason the murderer cannot supply the number demanded, his relatives make it up. Any beast round whose neck the murderer or his companions have managed to fasten a belt, without being seen, is not taken.[2] If any member of the murderer's kraal should leave it while the arrows still

[1] See Hollis, *The Masai*, pp. 310-311. This custom of regarding the dead man's kraal as "feuds" does not seem to have been binding during latter years in Tanganyika.

[2] Probably a piece of sentiment. The beast is regarded as "bribed" when the belt or cable has been placed round its neck.

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remain before the gates, every ox, cow and calf of the murderer is forfeit.

(*d*) If the deceased has very few relatives, they sometimes try to surprise the murderer's cattle when out grazing. They hastily run them to their own kraal and brand one or two with their own brand.[1] If they succeed in branding a few before the relatives of the murderer arrive, the latter may only remove the bell-oxen and herd-leaders. All the remainder are forfeit.

Until the matter of the murder has been settled in any of the above ways, or by the killing of the murderer without trial, no man from the murderer's kraal may be married to a girl from the kraal of the deceased and vice versa. This applies to all Masai, irrespective of clans or families. Donkeys, sheep and goats are never included in the property forfeited except by mutual agreement.

En-gooki: Parricide or Fratricide

If a son kills his father, or a brother his brother, he forfeits all rights to inheritance. The property goes to his brothers, their wives or (if he is an only son) to his uncles. If married, he forfeits his wife and children. If unmarried, he will never be given a Masai woman to wed. He is generally hunted from his kraal, and with his mother (to whom the blame for his crime also attaches) becomes an outcast.

Murder by unusual means—such as poisoning—is a very rare offence. The penalty would be the same as in murder by any ordinary method. Should the poisoned individual recover, the penalty would be the same as in the case of a serious injury. In some of the very few cases of murder by poisoning that have occurred in the past the culprit has been executed by the Masai.

Homicide is dealt with according to the gravity of the matter, the degree of provocation caused and the element of chance or accident existing. It is generally settled by the payment of twenty cattle and nine cattle, or forty cattle and nine cattle.

[1] For a comprehensive illustrated list of Masai cattle-brands, see *Die Masai* by M. Merker. (Berlin, 1910. Dietrich Reimer.)

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E'-TOOSHO: ASSAULT

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Resulting in the loss of an eye—no penalty.

Resulting in the tearing of an ear-lobe—a fine of one ewe.

Resulting in the loss or breaking of a tooth—a fine of one ewe.

Resulting in the breaking of a bone—an ox of the offender's (he may not have been the aggressor originally) is slaughtered then and there, and all partake of it. The injured man must not see the skin of the slaughtered ox. At the same time, a fine of one heifer is inflicted, but if the injured man should die before this has been handed over, twenty and nine cattle may have to be paid subsequently by his slayer.[1] [682]

To strike a man with an arrow, a club, spear, sword, or knife would result in the imposition of a fine of one fat sheep or one ox, according to the extent of the cuts or other injuries inflicted.

The preceding penalties refer to Masai only. If the murdered man be a Bantu or savage (*Ol-mashi*), and if he was known to and a friend of the Masai, twenty and nine cattle must be paid to his relatives. In the case of the murder of or assault on a stranger, no penalty is laid down. [681] [679] [682]

The reiteration of the number nine in the fines prescribed may be explained as follows. A certain round number of cattle is settled upon as fine or compensation. To this number (generally twenty or forty) must be added nine more for the body of the murdered man, in order to wipe out the stain of blood which lies between the rival parties. These nine cattle are accounted for according to the orifices of the human body, thus two for the ears; two for the eyes; two for the nose; one for the mouth; one for the urethra and one for the anus.

'NYAMIN: THEFT

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Theft of any kind is almost unknown among the Masai, but if one Masai should steal cattle from another, the thief must pay five beasts for each beast stolen, the sex of the animals paid depending on the sex of the stolen beasts. If sheep are

[1] See Hollis, *The Masai*, p. 312.

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685 stolen, the fine is one ox for each sheep stolen. In the cases of thefts from *'l-murk*, the fines are always reduced, because it is held by the Masai that all the cattle in the country belong, in reality, to them.

If the thief has no cattle, he must give his daughter in marriage to the man whom he has robbed if the latter is a Masai. He gets paid the usual dowry for her, however. If the theft is one of money (a practically unknown crime), the amount of the fine is regulated by the amount of money stolen and the fine must be paid in cattle.

The offence of arson is not known, and there is no stated penalty. If, as a result of grass-burning or through carelessness, a man is the accidental cause of another's kraal being destroyed by fire, he is supposed to bring a bottle of honey, or a cow,[1] by way of compensation. No fine is laid down.

EN-GIOPO: ADULTERY. *EN-GITAAPARE*: SEDUCTION

684 [754] If it be known that a man has lain with a woman of another age, he is cursed and has to pay two bottles of honey and two cows before the Elders will remit the curse.[2] Should he be caught in the act, the friends of the cuckold tie him up at the kraal door and he is beaten, pelted with cow-dung and spat upon by everybody, including the women. If the offender is a warrior, his pigtail is cut off and he is cursed. This humiliating punishment is greatly dreaded.

It is no offence for a man to commit fornication or adultery with a woman or girl of his own age, but should a warrior fertilise an unmarried girl, it is considered very wrong. He [748] must pay a cow and a bottle of honey, and the child will be the property of the man the girl is going to marry.[3] If the girl is not engaged, the child will be the property of her father, or her eventual husband may take it. By arrangement, Masai warriors generally marry the girls they cause to conceive.

[1] The Masai are not definite regarding the cow in this case. In fact, the Elders had a mild squabble on the point when the above information was being taken.

[2] See Hollis, *The Masai*, p. 302.

[3] Masai girls are often engaged to be married from their very earliest years.

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E-TAREMU EN-GIOO : ABORTION

Abortion is rare.[1] Should a woman cause herself to abort, the matter is left to the women of the kraal, who generally beat the culprit. 683

If a woman is made to abort by her husband or by another man, the matter is again left to the women. They may beat the culprit, but the more usual procedure is for them to take an ox of the abortionist's to some quiet place and beat it to death with sticks. The women then eat this ox, but no men or no pregnant women may be present while they are doing so.[2]

IL-DEKETA : CURSES

If a warrior should curse an Elder, he must offer him a cow, a calf and a bottle of honey. If he does not do this, he will die.[3] 693

If one warrior is cursed by another, he may try to kill him. If he succeeds in doing so, he is liable to no penalty. On the other hand, he may bring the matter before the Council of Elders, who will fine the guilty party. [692]

IL-MOMA LOO'L-MAASAE : MASAI ORDEALS

Eng-duo : *The Bow*[4]

A strung bow is laid on the ground and the deponent swears in front of the Elders that his words are true. He then steps over the bow. Should his words be true, no harm will come to him; but should he be telling a lie, he will have bad luck and may shortly die. 695 [999]

[1] During three and a half years spent with the Masai of Tanganyika Territory, I came across only one case of abortion. In this, the husband had caused his wife to abort, as he was jealous of the father of the child. This man was a warrior of the same age as that to which the husband belonged.

[2] The converse of the custom whereby no women may see meat for the warriors' consumption before it has been cooked.

[3] For conception of Masai curses, see Hollis, *The Masai*, p. 344.

[4] *Eng-duo* is no longer regarded very seriously by the younger generation of Masai, and is falling into disuse in consequence. The other ordeals, particularly *Eng-dati*, are still regarded with awe, and I think it would be difficult to find a Masai living with the Tribe who would be prepared to testify falsely under ordeal.

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Eng-itati : The Reim

695 A short reim is greased with butter at both ends. The accused grasps one end with his left hand and his accuser the other, also with his left hand. The accuser is then told to cut the reim in the middle with a knife or sword which he is given for the purpose. If he does so and is making a false accusation, he will die. The accused may also be called upon to cut the reim in support of his defence. A similar fate will befall him if he is lying. (This form of oath is considered very binding, and no Masai will enter upon it lightly. It may be compared with the Nandi ordeal described on page 77 of *The Nandi* by Sir Claud Hollis.)

En-dere : The Spear

The iron-shod haft of a spear is driven into the ground for about a foot, and is then withdrawn. The deponent urinates, and then spits into the hole thus made. No one may look while he is doing this, and all turn their backs. He then swears that his words are true. The Elders then fill in the hole with earth and stamp it down. If the deponent is lying, he will die.

En-aishó : The Honey-wine

If a man is accused of theft and denies it, he must drink from a gourd of honey-wine in front of the Elders, having sworn that he is innocent. If he is telling the truth, he has nothing to fear, but if he is guilty he will have no more luck [777] in life and will probably end by being killed by a lion.

It is an axiom of the Masai that no punishments should be laid down in the event of a man being discovered to have, deliberately, made a false oath. The matter is left to God, and the offender is invariably suitably punished by Him.

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